

August 29, 2008

The Honorable Anne K. Quinlan,
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re STB Finance Docket No. 35087, *Canadian National Railway Company and
Grand Trunk Corporation – Control – EJ&E West Company*

Dear Secretary Quinlan:

On January 28, 2008, the National Industrial Transportation League ("League") filed a letter with the Board expressing its support of the Railroad Control Application of the Canadian National Railway Company ("CN") and Grand Trunk Corporation ("GTC") (collectively, "CNR/GTC") filed October 30, 2007 in the above proceeding. In that application, CNR/GTC ask the Board to authorize their proposed acquisition of control of EJ&E West Company ("EJ&EW") (the "Transaction"). In that letter, the League noted that the proposed Transaction would have significant transportation benefits by providing CN with a continuous route around Chicago, one of the worst rail chokepoints in the nation. This would result in reduced demand on the rail capacity in the Chicago area, and would help to reduce congestion in the Chicago area. CN customers, and rail customers in general, would benefit from increased fluidity in the Chicago area.

On August 14, 2008, the CNR/GTC filed a Petition to Modify the Procedural Schedule to Provide For a Prompt Final Decision on the Merits Under 49 U.S.C. 11324(d)(1) Subject to a Condition Preserving the Environmental *Status Quo* Pending Environmental Review ("Applicants' Petition"). The Applicants' Petition requests the Board to modify the procedural schedule in this case to permit the Board to serve, by October 15, a final decision on the merits effective November 15, 2008 that would determine the approval of CN's proposed acquisition of and Control of EJ&EW. If approval is granted, the Applicants' Petition requests the Board to condition that approval on any terms that the Board determines are required, and on CN preserving the environmental *status quo* until the Board's completion of its environmental review. The Applicants' Petition would also defer until the conclusion of the Board's environmental review the imposition of any conditions governing any change in the environmental *status quo*.

The League strongly supports the Applicants' Petition, and urges the Board to approve it promptly. Approval of the Applicants' Petition would permit the Board to (1) meet its obligations under the statute, (2) permit the Board to evaluate all aspects of the Transaction, including the environmental concerns that have been raised, and, (3) properly balance the environmental concerns of the community and the public's interest in efficient freight rail service.

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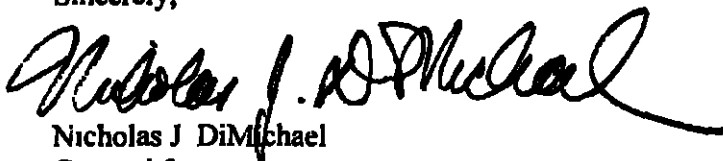
In its decision served November 26, 2007, the Board designated this Transaction as "minor" under the Board's rules. Under 49 U.S.C. 11324(d), the Board is required to approve a transaction if it meets the standards of the statute. More importantly in the current situation, 49 U.S.C. 11325(a) and (d) require the Board to issue a final decision in a minor transaction by the time period set forth in the statute. In its decision No. 2, the Board ruled that a final decision would be issued by April 25, 2008, i.e., within the statutory deadline. The record was developed on that basis, and has closed. However, the applicable statutory deadline is long passed without a decision, as the Board has labored to conclude an unprecedented environmental review.

The League believes, however, that the Board's desire for an environmental review cannot override the statutory requirement for a prompt completion of the transaction within the time limits established in the law. While the Board has indicated that it believes that it has some discretion to delay a decision beyond the period called for in the statute, see Decision No. 13 at 5-6, such discretion cannot be unlimited, and the five-month statutory period that the Board initially set for a decision has already been almost doubled. Moreover, the Board's recent Decision No. 13 provides no assurance that the environmental review will be completed before the Transaction would terminate under its terms. Those terms permit the Transaction to be terminated if closing does not occur by December 31, 2008, or more than eight months *after* the applicable statutory deadline in this case.

Approval of the Applicants' Petition would enable the Board to meet its statutory deadlines, while still giving the Board time to fully evaluate the environmental concerns that are at issue. Under the terms of the Applicants' Petition, the Applicants will maintain the environmental *status quo* until the completion of the Board's environmental review. Thus, the Transaction will be preserved, without compromising the Board's desire for a complete environmental review. All parties will continue to maintain their full ability to participate in the Board's environmental review, which will continue undisturbed.

As noted above, the League believes that this Transaction would have significant transportation benefits. Those benefits would be lost entirely as a result of regulatory delay, unless the Board grants the Applicants' Petition. There is no sound reason for the Board to risk the loss of this Transaction. The Board should promptly grant the Applicants' Petition.

Sincerely,



Nicholas J. DiMichael
Counsel for
The National Industrial Transportation League

cc All Parties of Record
